

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3401 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MUKUNDBHAI GUNVANTRAI BHATT

Versus

EXCELL INDUSTRIES LTD & ANR.

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Appearance:

MR TR MISHRA for Petitioner

MR KS NANAVATI for Respondent No. 1

None present for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, by this Special Civil Application has made challenge to the order of the Industrial Tribunal, Gujarat State, Ahmedabad, dated 30th April 1984, made on the application filed by the petitioner on the same day. The petitioner has stated the facts in the

application that the applicants therein are the workers of M/s.Excell Industries and are elected representatives of the affected parties in the above referred reference. This application has been made in Ref.(IT) No.716/81 which was between M/s.Excell Industries and its workmen regarding certain demands made by the workers. In the said application it was stated by the petitioner that it has come to his knowledge that Bhavnagar Rashtriya Mazdoor Sangh has made a settlement in this reference, which is against the interest of the workers and the said settlement has been entered into without taking the workers into confidence. Prayer has been made that if any such settlement has been arrived at and if the same is produced before the Tribunal, then the Award in terms of the said settlement may not be passed as the workers will be at loss in many ways. The workers have resigned from the so-called Bhavnagar Rashtriya Mazdoor Sangh and therefore they do not have any power and therefore the settlement may be cancelled and the Award need not be passed as per the settlement. The application was concluded by the petitioner stating therein that he and other applicants are the elected representatives of the workers and have right to appear in the matter on their behalf. Papers relating to same were enclosed to the application. A request has been made to permit them to conduct the matter. The Industrial Tribunal has passed the order dated 30.4.84 on this application and declined to entertain the same only on the ground that it had already passed the Award and as such he has become functus officio.

3. Mr.T.R. Mishra, learned counsel for the petitioner relying on the decision of Supreme Court in the case of Grindlays Bank Ltd. v. Central Government Industrial Tribunal & Ors., reported in 1980 (Supp.) SCC 420, contended that the order of the Industrial Tribunal is perverse on the face of it as till the Award is published under Section 17A of the Industrial Disputes Act, 1947, and thirty days expiry from the publication thereof, the Tribunal has all control, it is seized of the matter. It may become functus-officio only after expiry of thirty days from the date of publication of the Award and not at any interim stage or prior to said stage. The learned counsel for the petitioner contended that the Award made in this case was not even published on 30th April 1984, what to say to come into force on the said date.

4. The learned counsel for the respondent, Mr. K.S. Nanavati though admitted the position of law as laid down by the Supreme Court in the case of Grindlays Bank Ltd.

v. Central Government Industrial Tribunal & Ors. (supra) and also does not dispute the factual matrix that the Award was not published on 30th April 1984, but he contended that the petitioner has no locus-standi to file the application. It has next been contended that the application filed by the petitioner was not maintainable on other grounds also. The learned counsel for the respondent has tried to justify the order made on said application on the grounds other than the ground on which the application was rejected.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. It is admitted fact that the Award was not published on 30th April 1984 and as such it has not come into force. I find sufficient merits in the contention of the learned counsel for the petitioner that the order of the Tribunal is perverse. The Hon'ble Supreme Court, in the case of Grindlays Bank Ltd. v. Central Government Industrial Tribunal (supra) has held that under Section 17A of the Act, an Award becomes enforceable on the expiry of thirty days from the date of its publication under Section 17 of the Act. The proceedings with regard to a reference under Section 10 of the Act, are, therefore, not deemed to be concluded until expiry of thirty days from the publication of the Award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the Award becomes enforceable under Section 17A. It is true that the petitioner, as such, was not a party to the reference, but nevertheless, it is not in dispute that the petitioner was one of the workers in the industry and as such whatever Award is given in reference, it would certainly effect his rights. He is a person concerned and beneficial under the Award and as such, he had all the right to file an application. Taking into consideration this fact, the ground on which the application was rejected by the Industrial Tribunal, is wholly arbitrary and perverse and as such it cannot be allowed to stand.

7. So far as the other contentions raised by the learned counsel for the respondents, Mr. Nanavati, in support of the order made by the Tribunal, is concerned, it is suffice to say that the validity of the order impugned ordinarily be considered with reference to the grounds given in the order and not on the basis of other grounds which are sought to be supplemented by the

counsel for the opposite side, which were not raised before the Tribunal and on which no adjudication has been made by the said authority. It is not a case where this Court is allowing this application on merits, but only the order which has been made of rejection of the application of the petitioner has to be set aside. Meaning thereby, the Industrial Tribunal has to consider this matter afresh on merits after hearing both the parties. The company-respondent will be at liberty to raise all points and available defences against the prayer made by the petitioner in the application including preliminary issue that the petitioner has no locus-standi to move such application.

8. In the result, this Special Civil Application succeeds and the order of the Industrial Tribunal, Ahmedabad, dated 30th April 1984, annexure 'D', is set aside and the Tribunal is directed to decide the application of the petitioner afresh on merits after affording full opportunity of hearing to both the parties. Both the parties will be at liberty to produce the evidence, oral or documentary, in support of their cases. Rule made absolute with no order as to costs.

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